

1994

Salt Lake City v. Danny Hardman : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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SALT LAKE CITY,	:	
Plaintiff/Appellee,	:	
vs.	:	No. 940272-CA
DANNY C. HARDMAN,	:	Cir.Ct No.: 9350115120 TC
Defendant/Appellant.	:	Priority No. 2

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REPLY BRIEF OF APPELLANT

AN APPEAL FROM THE THIRD CIRCUIT COURT, SALT LAKE CITY DEPARTMENT
JUDGE FRANCIS M. PALACIOUS

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REPLY BRIEF OF APPELLANT

REPLY TO POINT I

Defendant agrees that the trial court is given discretion in controlling the duration and scope of closing argument. Herring v. New York, 95 S.Ct 2550, 2555 (1975). See, also, State v. St. Clair, 282 P.2d 323, 331 (Utah 1955). However, the trial court must exercise discretion within the limitations imposed by State and Federal Constitutions. Herring v. New York, 95 S.Ct 2550 at 2555.

Given these constitutional limitations, the question before this court is whether the trial court has, by limiting closing argument to ten minutes, abused this discretion. Keeping in mind that no portion of a criminal trial is "more important than the

opportunity to marshall the evidence before submission of the case to judgment." Herring v. New York, 95 S.Ct at 2555.

The answer to the question before this court is clear. The limitations imposed on defendant's counsel by the trial court which limited closing argument to 10 minutes is a denial of Defendant's right to "marshall the evidence." Id. This denial by the trial court is a violation of Defendant's right to "appear and defend in person and by counsel" guaranteed by Article I §12 of the Utah Constitution and the Sixth Amendment guaranteed by the U.S. Constitution.

The Appellee has characterized the case of Foster v. State, 464 So.2d 1214 (Fla. App. 3 Dist. 1984), as standing for the proposition that restricting defendant's counsel to a closing argument of less than 30 minutes would not be an abuse of the trial court's discretion. This is a mischaracterization of the court's holding in Foster. The Foster case stands for the proposition that there is no requirement that Defendant's counsel's closing argument be at least thirty minutes long in order to avoid a claim of ineffective assistance of counsel. Id. at 1217. However, the Foster court took no position on whether a closing argument, with a limit of less than thirty minutes, would be an abuse of discretion. Id. at 1217. Rather, the Foster court looked to the judgment of defense counsel in determining the length of the

closing argument that would be in Defendant's best interest. Id. at 1217. Therefore, this court gains no insight, into whether there was an abuse of discretion in this case, from the Foster decision.

The Appellee has also cited the case of U.S. v. Moye, 951 F.2d 59 (5th Cir. 1992). In an attempt to dissuade this court from finding the trial court's ten minute closing argument limit was an abuse of discretion. The Moye case is factually very different from the case before this court for several reasons. First, the Moye case involved a "single-issue" trial dealing with the parties' knowledge or intent. Id. at 63. The case before this court is a multifaceted DUI case, with neither alcohol or illegal drugs were involved. In this case, the defense counsel was required to address the following issues: (1) the reliability of field sobriety tests, (2) the effect of Defendant's prescription drug on the central nervous system, (3) whether the levels of meprobamate and carisoprodol were within therapeutic levels, (4) whether the meprobamate indicated a recently ingested high dosage or simply long term usage at the normal rate, (5) whether the levels were higher or lower than when Mr. Hardman was driving, and (6) whether any conclusions as to his level of impairment could scientifically and accurately could be drawn from the blood test.

Second, there were numerous contradictions in the evidence presented. These two factors alone distinguished the single-issue Moye decision from the trial court's decision in the instant case.

Therefore, use of the Foster and Moye decisions by Appellee are of little relevance in determining whether or not this trial court abused its discretion, and thus violated defendant's constitutionally protected rights to a fair trial and an effective assistance of counsel.

REPLY TO POINT II

The Appellee's argument that the trial court's castigation of defense counsel did not prohibit Defendant from obtaining a fair trial also falls short of convincing. The Appellee has cited the case of Strickland v. Washington, 104 S.Ct 2052 (1984), and State v. Knight, 734 P.2d 913 (Utah 1987) in support of its proposition that a judicial comment must undermine the confidence in the jury's verdict in order for reversible error to have occurred. However, neither of these cases deal with the castigation of defense counsel or limitation of time for closing argument. The Strickland case deals with attorney error in not requesting a psychiatric examination, and the nondisclosure of evidence of Defendant's past criminal background via a presentence report. Strickland at 2054-55. Similarly, the Knight case deals with the nondisclosure of evidence of potential witnesses by the prosecution. Knight at 916.

Neither of these cases deal directly with the question of a trial court's castigation of Defendant's counsel, as it relates to the deprivation of Defendant's rights of a fair trial or assistance of counsel; and, therefore appear to have little precedential value.


Finally, the case of People v. Young, 618 N.E.2nd 1026 (Ill. App. 1 Dist. 1993), cited by Appellee, also fails to support Appellee's position that the trial court Judge's comments were harmless. While the Young court held that the judicial comments were not a material factor in the Young case, the Young court made it clear that it would have been prejudicial, and thus result in reversible error, if the trial judge had conveyed improper prejudicial impressions to the jury by displaying a hostile attitude toward defense counsel by inferring that defense counsel's presentation, such as a closing argument, is unimportant. Id. at 1034. This is precisely the situation which occurred at the trial court level in the instant case, and this court should similarly find the trial court's remarks were prejudicial, and thus denied Defendant the right to a fair trial and effective assistance of counsel.

CONCLUSION

WHEREFORE, based on the foregoing, Defendant Danny C. Hardman, requests this Court reverse the remand for a new trial.

Respectfully submitted this 6th day of March, 1995.

CORPORON & WILLIAMS, P.C.


TERRY R. SPENCER
Attorneys for Appellant

CERTIFICATE OF SERVICE

I, Terry R. Spencer, certify that on the 6th day of March, 1995, I served a copy of the attached Reply Brief of Appellant upon Jeffrey S. Gray, counsel for Appellee in this matter, by mailing it to them by first class mail with sufficient postage prepaid to the following address:

Jeffrey S. Gray
Salt Lake City Prosecutor's Office
451 South 200 East, #125
Salt Lake City, Utah 84111

A handwritten signature in dark ink, appearing to read 'Terry R. Spencer', written over a horizontal line.

Terry R. Spencer
Attorneys for Appellant